

Before The
Federal Communications Commission
Washington, D.C. 20554

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In The Matter Of:

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

)
)
) Gen. Docket No. 93-253
) November 10, 1993

Comments on NPRM
and the Auction Process from
Wireless Services Corporation

POSITION PAPER

The following Position Paper was prepared by and is the view of Wireless Services Corporation.

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1. Introduction

Wireless Services Corporation ("Wireless") is a company engaged in the pursuit of licenses and permits to operate one or more Personal Communications Service (PCS) systems. The FCC issued to Wireless six experimental radio licenses to conduct PCS tests in Indianapolis, New Haven, Hartford, Cleveland, Columbus, and Cincinnati on March 25, 1993.

Wireless's work in this initial, prestartup phase of the PCS industry has centered around developing business/operating and financing plans with other experimental license holders that could lead to a national interoperable network. Wireless, by any definition a small business with substantial female ownership and management participation, is owned by experienced business professionals and entrepreneurs.

2. Contents

In this Position Paper, Wireless will comment only on factors affecting the 20 and 10 MHz frequency blocks, "C" and "D" that have been designated for auction to small businesses, women, minorities, and rural telephone companies (SWMR's). These comments will be in regard to:

- National goals and the public interest
- Overall auction issues
- Expected bid prices
- Bidding Options
- Eligibility
- Amount of application fees and payment of license obligations
- Restrictions on sale or other disposition of licenses

3. Summary

The Commission in its Notice of Proposed Rule Making (NPRM), released October 12, 1993, outlined an ambitious and thought out plan to ensure competition in the provision of new and innovative PCS services to rural as well as metropolitan areas. Simultaneously the draft plan seeks to include small and often disenfranchised entities in the benefits of being an FCC licensee. Wireless, as one of these small, significantly female entities agrees with the vast majority of the NPRM. However, as detailed below, there is concern that in an effort to curb the abuses of past lotteries, new regulations will inadvertently cripple the ability of SWMR's to finance applications, down payments on license fees and capital equipment costs. Simply put, the trait SWMR's have most in common (with perhaps the exception of rural telephone companies) is limited capital resources. Thus, there is a paradox between the desire to encourage small business and the government's desire to reduce the federal deficit. As Wireless will argue below, this paradox can, in part, be solved by allowing the auction rules for Blocks C and D to be different from the other blocks. The benefits to consumers in terms of choice and pricing and the national interest in terms of job creation and fair dealing is so substantial that a significant goal should be to develop an auction process that allows SWMR's and their financial backers to develop plans whereby profits commensurate with the financial risks can be earned. Only if the risk/reward equation is in balance will the auction attract the necessary numbers of SWMR's to maximize the cash contributions to the Federal Treasury.

4. National goals and the public interest

By the Omnibus Budget Reconciliation Act of 1993 (Budget Act) Congress has mandated and allowed preferences to be given to SWMR's. The public interest can be served by this action in two fundamental ways: encouraging a price competitive, broader, more creative range of services and encouraging job creation as a diversified group of smaller businesses expands to offer service to the public.

Since SWMR's largely are not blessed with extensive capital resources or burdened with excessive overhead and bureaucracy they must rely on creativity to finance, organize, and market PCS. At first glance, the prospect of seven licenses in each market is very threatening to SWMR's and their financing resources. Thus, if the C & D Blocks are to attract significant bidders, SWMR's must convince financial backers that their plans can be successful. Given the high cost structures of the giant national and regional telecommunications bidders, the vested interests in maintaining relatively high prices for existing services, and the national names of many of the larger bidders, it is likely that SWMR's will have to develop creative positioning and lower pricing to attract a viable market share. This reality of the marketplace should serve consumers well by creating low-priced alternatives to the often big business oriented telecommunications providers.

Further, SWMR's will likely be a significant source of job creation. These small, entrepreneurial companies will have to staff up to provide service. Many of these jobs will be good, relatively high paying jobs in a wide variety of locations. In addition to competition and fair pricing, there is the general public good of offering opportunity to diverse (ethnic, geographic and gender) groups.

However, a true SWMR, almost by definition, does not have the money on hand to bid, build or operate these systems. Thus this laundry list of the public good is achievable if and only if SWMR's can finance the application fee, payment of license obligations, and capital costs. Therefore, Wireless strongly urges the Commission to consider each and every auction rule for Blocks C and D in the light of its impact on investors and financial institutions from whom true SWMR's will be seeking funds.

5. Overall auction issues

One of the general themes of the NPRM is that the commission seeks to avoid the roulette type gambling that was an outgrowth of the cellular telephone lottery process. Wireless agrees that it is appropriate that the Federal Treasury should be the beneficiary of the license value rather than randomly lucky lottery jackpot winners. It should be remembered that the national goal is to provide extensive competitive service, create jobs, contribute to the Federal Treasury and include diverse groups: not to prevent capitalists from making money. However, the advent of a totally new auction process, the significant financial showing necessary to become a bidder, seven vs. two licenses, coupled with restrictions on license transfers could mean depressed bid prices. Therefore, Wireless believes that the Commission should encourage higher bid prices by avoiding crippling rules for SWMR's. Only if rewards commensurate with the high risk of Blocks C and D can reasonably be projected will there be significant bids for all of these nearly 1000 licenses.

6. Expected bid prices and minimum bids.

It is almost without question that the bids for the C & D Blocks will often be lower per POP than the other Blocks. Factors include cost of capital, volume of capital necessary to support the required build out, marketing risk, equipment buying power, smaller markets, etc. The application fee alone, assuming four bidders for every market requires a capital posting of \$600 million.

Auctions have a style and psychology all their own, whether they be antique furniture, rare art or charity benefits. To maximize total receipts any auction must attract substantial numbers of financially capable bidders. It should not be overlooked that a significant draw and ingredient to the success of attracting these bidders is frequently the opportunity to get a bargain along with full value purchases. Particularly since application fees are so significant, in comparison to any past licensing process, Wireless recommends that the Commission set as minimum bid the application fee of 2¢ per MHz for Blocks C & D.

7. Bidding Options

Given the need to attract large numbers of bidders and their financial backers to ensure a spirited auction, Wireless supports the simple, straight forward auction process of oral bidding. This recommendation for Blocks C & D is furthered by the Commission's own argument that sealed bids discourage collusion. As the Commission seems to be encouraging group action for these blocks, this potential problem of open bids appears moot.

8. Eligibility

Eligibility is, perhaps, the most important issue the Commission will face in this process. Wireless believes that the public policy objective is to establish important new opportunities for SWMR's and their customers who will be benefited by new and innovative service offerings. The goal is not to reward individuals or organizations by chance but, rather, to bring different perspectives, competitive concepts and energy to the market. Therefore it is vital that "fronts" organized by large telecommunication companies not be used in the bidding for Blocks C & D licenses.

The Commission has the unenviable task of developing rules separating "fronts" from legitimate groups of entrepreneurs. This is further complicated because it is almost without question that SWMR's will of necessity band together to raise capital, bid, and operating licenses. Wireless recommends that very creative financing structures be allowed *as long as the qualified SWMR still has effective control of any individual license.*

9. Amount of application fees and payment of license obligations

Wireless believes that the proposed application fee is a significant hurdle for many SWMR's to vault to become eligible to bid in the C & D Blocks. It does serve the important function of eliminating frivolous bidders and prequalifying serious players. It would be counter productive to an efficient auction if bidders with no real capital resources or operating capability won licenses that would have to be reaucted later. However, once a bidder has proven its viability and capability by producing application fees, it is appropriate to allow flexibility in payment of license obligations. Wireless believes that the Commission's own suggestion of 20% prepayment for SWMR's is appropriate. However, it introduces an element of uncertainty as

to the amount that must be transferred to the Federal Treasury in a very short time period. An uncapped prepayment may have the effect of depressing the total bid. Therefore, Wireless recommends a cap on the total prepayment of \$1 per POP.

10. Restrictions on sale or other disposition of licenses

As has been the theme throughout this Position Paper, Wireless believes that the Commission will generate substantial revenue from the auction of licenses in the C & D Blocks if, and only if, the SWMR can rationally finance and operate their licenses in the face of substantial competition from telecommunications giants and other forms of wireless service. A critical element in this scenario is rational cash out mechanisms. There is nothing inherently wrong with the transfer of licenses or profits being made for value created. The Commission's interest should be in creating efficient auctions so that the raw license value goes to the Treasury. Wireless asserts that harsh restrictions on transfers will actually lower the auction prices as investors and financiers will be concerned that there is limited salvage value on licenses that get into trouble. Surely some of the nearly 1000 licensees for the C & D Blocks will get into financial, operating or other trouble before these licensees reach break-even. It is also likely that license holders who have developed successful partnerships, national manager structures, efficient geographic groupings will sometimes be willing to pay more for available licenses on the secondary than the price first bid. Therefore, the market should be allowed to function freely.

Wireless is cognizant of the Budget Act's requirement regarding antitrafficking restrictions and "undo enrichment." This concern could largely be dealt with by requiring C & D Block license to be transferred only to other SWMR's during the first five years unless a hardship waiver is obtained from the Commission. Further, the Commission's own suggestion that all deferred payments become due at license transfer time is appropriate.

Respectfully submitted,

Wireless Services Corporation
November 10, 1993

By:

A handwritten signature in cursive script, reading "Mary C. Metzger", written over a horizontal line.

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